



Adoption
5/26/22

In **B.A. v. D.D.**, 189 N.E.3d 611 (Ind. Ct. App. 2022), the Court held that the trial court did not err in ordering the Father to submit to a DNA test; however, the trial court did err in granting summary judgment in favor of Adoptive Parents, despite Father's untimely response to the Adoptive Parents' motion for summary judgment.

Child was born in February 2018. In March 2018, Father executed a Paternity Affidavit identifying himself as Child's father. Afterward, DCS filed a petition identifying Child as a CHINS, placing Child with Adoptive Parents and granting them physical custody in April 2019. Adoptive Parents filed an amended petition to adopt Child on July 8, 2021, acknowledging Father as Child's legal father, but claiming his consent to the adoption was unneeded as he is not Child's biological father. The trial court granted Adoptive Parents' motion and ordered Father to undergo DNA testing, which showed he is not Child's biological father. On September 29, Adoptive Parents filed a motion for summary judgment, reiterating their argument that, because Father is not Child's biological father, his consent to the adoption is not required. The trial court issued an order stating that Father should file his response to Adoptive Parent's motion for summary judgment within the period established by Indiana Trial Rule 56. Father failed to respond within the statutory time limit but claimed it was due to lack of notice. Father asserted in his response to the motion for summary judgment that the paternity affidavit he executed in 2018 established him as Child's legal father. Father requested the trial court set aside its prior order requiring him to consent to DNA testing, claiming that prospective adoptive parents cannot seek to establish the paternity of a biological father where Father's paternity has already been established by the paternity affidavit. Alternatively, Father argued that, even if the trial court failed to set aside the order, the DNA results do not negate Father's paternity which was established through the paternity affidavit. Adoptive Parents filed a motion to strike Father's response, arguing that the order did not alter the response period provided by Trial Rule 56. The trial court granted both the motion to strike Father's response and Adoptive Parent's motion for summary judgment. Additionally, the trial court denied Father's motion to set aside the order for DNA testing, as well as a subsequent motion by Father to correct error and provide a copy of his paternity affidavit.

The trial court did not err in ordering Father to submit a DNA test. Id. at 615. Adoptive Parents filed the motion for DNA under Indiana Trial Rule 35 which "allows a court to order a party 'to submit to a mental or physical examination when the mental or physical condition of a party (including the blood group) is in controversy'" Id. (quoting Ind. Trial Rule 35(A)). In addition to failing to object to the original order requiring him to take the DNA test, Father failed to show how the trial court erred, as he did not cite Trial Rule 35 in his response, explain why the rule did not apply to him, or explain how the trial court incorrectly applied the rule. Id.

The trial court did not err in striking down Father's response to Adoptive Parents' motion for summary judgment. Id. Father did not show how the failure to receive the order notifying

him of the period to file his response to Adoptive Parents' motion prevented him from responding in a timely manner as the order simply reiterated the statutory requirement and did not alter it. Id. Although Father's attorney was not properly added to the order distribution, Father did receive the order. Id. That said, Father's failure to respond in a timely manner did not automatically entitle Adoptive Parents to summary judgment; a court is not required to grant an uncontested motion for summary judgment. Id. at 616.

The trial court did err when it granted summary judgment in favor of Adoptive Parents; there remained a genuine issue of material fact with respect to whether Father was a person who was entitled to grant or withhold his consent to the adoption, given the paternity affidavit and DNA results. Id. at 618. Adoptive Parents framed their issue as Father not being a biological parent, and therefore his consent was not needed; however, the Court noted that Indiana law provides that a legal parent is not always the biological parents, and consent is still needed from a legal parent. Id. at 617-18. While Adoptive Parents showed that Father was not the biological father, they had not presented any evidence regarding his legal establishment as the child's Father, and thus, a genuine issue of material fact remained. Id. at 618. Indiana Code has established that a petition to adopt a child can only be granted where certain individuals have executed written consent. Id. at 616. Here, consent is required from the mother of a child born out of wedlock and the father of the child with paternity established by a paternity affidavit or other court proceeding that is not an adoption proceeding. Id. The trial court did not have notice of Father's paternity affidavit until he provided it in his response to Adoptive Parents' motion for summary judgment, but his response was stricken. As such, the only evidence of paternity before the court is the DNA test proving Father is not the biological father of Child. Id. Adoptive Parents argued that, due to the proven lack of biological connection between Father and Child, they have met their burden of showing that no issue of material fact exists and Father's consent is not required for the adoption. Id. Adoptive Parents then argued that the paternity affidavit is nullified by the DNA test showing that Father is not the biological father of Child. Id. at 616-17. However, the Court explained that to successfully prove that there exists no issue of material fact, Adoptive Parents must show evidence that Father has not established his paternity, which Adoptive Parents failed to do. Id. Adoptive Parents also asserted that the reference in Indiana Code to a father whose paternity has been established means a biological father. Id. The Court disagreed with their argument, noting that if the legislature had intended to require consent before adoption only from biological fathers, rather than non-biological fathers, who had established paternity through a paternity affidavit, it would have said that. Id. As the legislature did not make that specificity, the court may not read it into the statute. Id. Finally, Adoptive Parents assert that Father is not a parent under the statute; however, the Court explained that, while that may be true, "parent" is not used in the relevant subsection, thus nullifying Adoptive Parents' claim. Id.